

**TESTIMONY OF GARY EISENMAN,
EXECUTIVE VICE PRESIDENT OF RELATED CAPITAL COMPANY
ON BEHALF OF THE
NATIONAL MULTI HOUSING COUNCIL AND
THE NATIONAL APARTMENT ASSOCIATION
PRESENTED TO
THE SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
ON
H.R. 3995, THE HOUSING AFFORDABILITY FOR AMERICA ACT OF 2002

TUESDAY, APRIL 23, 2002**

The American apartment industry...working together for quality, accessible, affordable housing.

Chairwoman Roukema and distinguished members of the Subcommittee on Housing and Community Opportunity, my name is Gary Eisenman. I am Executive Vice President of Related Capital Company, a developer, manager, and financier of real estate properties headquartered in New York that oversees more than 1,100 properties in 47 states. I am a member of the National Multi Housing Council, a trade association representing the nation's larger and most prominent apartment firms. NMHC operates a joint legislative program with the National Apartment Association, a trade group representing over 30,000 apartment executives and professionals. It is my pleasure to testify on behalf of both organizations. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, professional management, and finance. Together, NMHC/NAA members own and manage over five million apartment homes nationwide.

NMHC and NAA commend you, Chairwoman Roukema, for your leadership, and we thank the Members of the Subcommittee for your valuable work addressing the important issue of affordable rental housing in America. We, too, believe it is critical to meet the housing needs of low- and moderate-income families.

NMHC/NAA wish to express our support for H.R. 3995. Specifically, we appreciate Title II, which proposes valuable improvements to the FHA mortgage insurance program, and Title V, which would improve several public housing program components.

I have been asked to address the Section 8 Housing Choice Voucher Program. The program can be one of the most effective means of addressing the need for affordable housing; however, the program's potential has been constrained and its success should be greater. We support the provisions of H.R. 3995 aimed at improving the voucher program. However, even with those important reforms, the proposed legislation falls short of increasing the supply of housing from which voucher holders may choose. Without a sufficient supply of housing, voucher holders do not have choice, which is precisely what the Section 8 program aims to provide. We believe that the chief reason for the lack of housing available to voucher holders is the program's structure and administration, which discourage private owner participation and make it difficult for voucher holders to compete with unsubsidized residents for vacant apartments.

Restrictive program requirements artificially reduce the number of apartments available to voucher holders. In fact, according to one Department of Housing and Urban Development (HUD) estimate, only two to three percent of apartment properties with five or more units contain units that are subsidized with Section 8 vouchers. This extremely small percentage indicates the lack of market support for the program as it is now structured. As a result, voucher holders must visit multiple properties to find an owner who is willing to bear the cost burdens of participating in the program.

NMHC/NAA support greater property owner participation, but that participation must not be at the expense of property owners. Increased participation should occur because serving a subsidized resident represents an opportunity comparable to serving a market-rate resident. The acceptance of a Section 8 voucher must not be equated with lost income or decreased property values. Rather, the program should be as similar as possible to providing housing to market-rate residents by reducing costs that exceed those for non-voucher residents. Therefore, it is essential that the Subcommittee's efforts to improve the Section 8 program support broader owner participation by addressing the program's significant administrative burdens.

To increase owner participation, the program must be more "transparent" to the market. Transparency would minimize the differences between serving subsidized and non-subsidized residents. NMHC/NAA propose the following recommendations to achieve that goal:

- Property owners should not be subject to additional administrative burdens because they rent to Section 8 residents and, conversely, Section 8 residents should not be viewed as less desirable by property owners because of the burdens they indirectly create for property management staff.
- Owners should be able to turn vacant subsidized units over within a reasonable time that is comparable to the time period required to turn over market-rate units.
- Owners should expect timely rent payments for subsidized residents, and they should have the right to expect timely compensation if payments are delayed.
- All residents, including voucher holders, should be held accountable to common standards and laws established by states and localities. In addition, the program should only include federal laws that are applicable to both voucher and non-voucher residents.

My statement will focus on four key proposals NMHC/NAA believe would improve owner participation and, in turn, voucher utilization: (1) Improving the Housing Quality Standards Unit Inspection Process; (2) Improving the Subsidy Payment System; (3) Increasing the Payment Standard; and (4) Amending the Lease Addendum.

1. Improving the Housing Quality Standards Unit Inspection Process

Apartment owners agree that voucher holders should reside in decent, safe, sanitary environments, but we believe that this can be achieved without conducting lengthy individual unit inspections prior to occupancy. Currently, before an apartment is eligible for lease to a Section 8 voucher holder, the administering Public Housing Authority (PHA) must inspect that unit for compliance with HUD-prescribed Housing Quality Standards (HQS). PHAs handling 1,250 or fewer units must complete the initial unit inspection within 15

days of a tenancy approval request. Those with more than 1,250 units must conduct the initial inspection within 15 days or within a “reasonable” time after the request.

Unit-by-unit inspections delay resident occupancy even if the PHA conducts its inspection within the required time frame. Further, because of the limited resources available to PHAs for inspections, and the difficult logistics that accompany inspections, they are infrequently conducted in a timely manner. Some apartment owners report delays of 30 days or longer. Given that the professional apartment industry relies on seamless turnover to meet its overhead costs, the financial implications of such delays to owners are significant.

Not only do unit-by-unit inspections cause intolerable delays in leasing units, they do not necessarily satisfy HUD’s objective of protecting residents and assuring owner compliance with the agency’s health and safety criteria. They do not accurately assess the property’s regular property management practices or HQS compliance. They only reveal the status of a unit at a particular moment in time.

We propose speeding up the move-in process by allowing PHAs to conduct individual unit inspections within 30 days after the resident moves in and payment commences. PHAs could conduct building-wide, rather than unit-by-unit, inspections in certain cases. We also propose that PHAs advise voucher holders that they should not accept an apartment in significant disrepair and that they should report those apartments to the PHA. This approach would reward professionally-managed properties that participate in the program and allow PHAs to focus their scarce resources elsewhere. We wish to note that our recommendations are consistent with the proposed language currently under consideration by the Senate Banking and Urban Affairs Committee.

2. Improving the Subsidy Payment System

Another aspect of program administration that would improve private owner participation is improving the Subsidy Payment System. PHAs are required to make prompt, direct subsidy payments to apartment owners. Unfortunately, subsidy payments are often untimely, which discourages owners from participating. Yes, HUD’s regulations allow PHAs to be sanctioned for untimely payments, but those sanctions are nominal because they must be paid for from a PHA’s limited administrative fees. As a result, they do not serve as an incentive for prompt payment.

NMHC/NAA believe more apartment owners would participate in the Section 8 program if the costs of renting to voucher residents were more comparable to the costs of serving unsubsidized residents. Therefore, it is essential to overhaul Section 8’s costly payment structure. Just as owners would not regularly accept late rental payments from market-rate residents, they should not be forced to accept late subsidy payments.

One way to achieve the goal of transparency between subsidized residents and market-rate residents would be to require that all PHAs make automated electronic fund transfers, thereby assuring timely subsidy payments. While some PHAs already use automated funds transfer systems, making this uniform among all PHAs would substantially reduce costs for both owners and PHAs.

3. Increasing the Payment Standard

NMHC/NAA recommend that the Fair Market Rent (FMR) be based on at least the 50th percentile of area median income. The current payment standard to owners typically ranges between 90 and 110 percent of an area's FMR. Both the payment standard generally, and FMR levels specifically, are far too low to support owner participation. FMRs, set annually for each metropolitan area, must be high enough to encourage owner participation and, in turn, create a sufficient supply of apartments and choice for voucher holders.

The shortage of affordable housing is a true example of market supply and demand at work. Private owners must receive sufficient rents to cover the costs of developing and operating an apartment property or the property will not be built. If the FMRs are too low, the owners will not be able to rent to subsidized residents because they will not generate enough income to operate and maintain the property.

The current FMR level is the 40th percentile rent, or the dollar amount below which 40 percent of the standard-quality rental housing units are rented. Establishing the FMR at the 40th percentile is a primary reason many apartment owners do not participate in the voucher program. These rents are simply too low to support the property's operations.

We further recommend that the payment standard be raised to 120 percent of FMR in high-cost areas, and that PHAs be given the flexibility to raise the level to 150 percent in areas where the voucher utilization rate is less than 80 percent and the market occupancy rate is greater than 95 percent. It should be noted that in high-cost areas, even that increase would still be well below market rents.

4. Amending the Lease Addendum

HUD requires every lease to a Section 8 voucher holder include its standard addendum. The addendum itself requires that the lease include, word-for-word, all of the addendum's provisions. If there is a conflict between the addendum and another lease provision, the addendum preempts the lease.

The addendum contains numerous provisions that may override local practice and even landlord-tenant (NMHC/NAA prefer "owner-resident") laws, putting owners in a very untenable situation. Differences between Section 8 and market

leases also require owners to specially train their staffs to administer Section 8 leases. This is particularly difficult in an industry where employee turnover averages 50 percent.

In short, HUD's lease addendum is many times incompatible with state and local landlord-tenant laws and disregards industry-wide model lease language developed by NAA. This inconsistency creates confusion among apartment owners and causes difficulties for owners who must comply with one set of lease requirements for voucher residents and another for non-voucher residents residing within the same property. Apartment owners have told us time and time again that the lease addendum creates obstacles that discourage their participation in the program.

We propose the elimination or modification of the lease addendum to reflect standards used with market leases, thereby reducing administrative burdens and other costly procedures. Alternatively, NMHC/NAA propose establishing pilot programs to test alternative, less conflicting and less burdensome lease addendums or the NAA model lease.

NMHC/NAA support the addendum's intended purpose, which is to ensure the safety of Section 8 residents. However, residents are already protected by existing local laws. The addendum does not add anything to these protections, it only adds costly burdens to owners, which, in turn, discourages their participation in the program.

In summary, NMHC/NAA support the Section 8 program and wish to engage more fully in it. However, such participation is not economically maximized without reforming the program to reduce the significant costs and burdens it imposes on apartment owners. I thank you for the opportunity to testify on behalf of the National Multi Housing Council and the National Apartment Association, and wish to offer our assistance as the Subcommittee continues with its important work toward creating a more effective and efficient program. Thank you.